

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----:
MARK NUNEZ, et al., : 11 Civ. 5845 (LTS) (JCF)

:
Plaintiffs, : MEMORANDUM
: AND ORDER

- against -

CITY OF NEW YORK, et al.,

:
Defendants. : USDS SDNY
: DOCUMENT
: ELECTRONICALLY FILED

-----:
JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

On February 28, 2013, I issued a Memorandum and Order adjudicating disputes concerning the means by which class notice would be distributed to members of the plaintiff class. Both parties now seek modifications to the Class Notice order. The plaintiffs, alleging that the defendants have violated the order by failing to post the notice "where it is reasonably calculated to be seen by inmates in the area," request (1) that the Class Notice be laminated, (2) that it be posted inside the intake/receiving area pens instead of outside (3) that it be posted inside the housing areas near the telephones rather than outside between the entrance gates, and (4) that copies be distributed to inmates in the Mental Health Assessment Unit for Infracted Inmates and Restricted Housing Units. (Letter of Vasudha Talla dated Oct. 25, 2013, at 1-2, 4-5). For their part, the defendants argue that the posting requirements have proven burdensome and that it will be more effective to

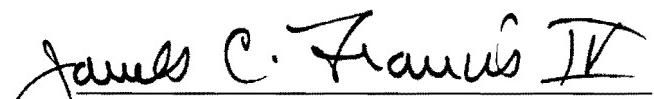
distribute the Class Notice individually to each newly admitted inmate and to post copies in the law library at each facility.

(Letter of Arthur G. Larkin dated Oct. 30, 2013, at 3-5).

Both applications are denied. For the most part, the parties are seeking to litigate aspects of the notice process that they had previously agreed to. If the plaintiffs seek to amend the Class Notice order, they must support their position with proof of the defendants' non-compliance by way of affidavit or, potentially, live testimony. For their part, the defendants now propose a means of notice -- individual distribution -- that they had previously opposed as unnecessary and burdensome. They, too, must make a record if they wish to substitute new means of notice for their obligations under the existing order.

Accordingly, the respective applications of the plaintiffs and the defendants to modify the procedures for providing notice to class members are denied without prejudice to renewal at such time as any party is prepared to proffer evidence.

SO ORDERED.


JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
November 5, 2013

Copies mailed this date:

Jonathan S. Abady, Esq.
Katherine R. Rosenfeld, Esq.
Vasudha Talla, Esq.
Emery Celli Brinckerhoff & Abady, LLP
75 Rockefeller Plaza
20th Floor
New York, NY 10019

Jonathan S. Chasen, Esq.
Legal Aid Society
199 Water Street, 3rd Floor
New York, NY 10038

Mary Lynne Werlwash, Esq.
The Legal Aid Society
111 Livingston Street
Brooklyn, NY 11201

William I. Sussman, Esq.
Joseph G. Cleemann, Esq.
Christopher Paul Conniff, Esq.
Amanda N. Raad, Esq.
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704

Arthur G. Larkin, Esq.
Diep Nguyen, Esq.
Corporation Counsel for the City of New York
100 Church Street
New York, NY 10007